

GENERAL INFORMATION FOR SPOUSES OF FEDERAL GOVERNMENT EMPLOYEES

Separation and Divorce

This package has been prepared to provide information to employees and spouses who may be involved in a breakup of the marital relationship.

Separation and divorce actions are private affairs between the marriage partners. Government attorneys, however, can assist the parties to ensure the production of employment data and other information necessary for an equitable resolution of the marital dispute by the court. The Government attorney can explain general federal employment and retirement considerations but will not take sides in the marital dispute, discuss the merits of your case with you or your spouse, or second-guess the advice of your private legal counsel.

Obtaining Private Legal Counsel

In order to protect your rights, it is suggested that you obtain an attorney who specializes in domestic relations. Possible sources of information on a particular attorney's specialities and competence are the Lawyer Referral Services of the local Bar Association, friends, associates and community leaders. Once you are represented by counsel, all legal inquiries should be directed to OGC through that counsel.

Finding the Right Court

One factor you need to consider is whether you satisfy the residence requirements in order to bring a divorce action in a particular jurisdiction. These requirements vary from state to state but, generally, one party to the suit must have maintained a permanent residence in the state in which the suit is brought for a certain period of time.

In addition to the traditional grounds for divorce such as adultery, desertion, physical or mental cruelty, etc., most jurisdictions have adopted a voluntary separation or "no fault" provision under which grounds for divorce can be established if both parties have lived separate and apart without cohabitation for a period of one year before instituting the action. You should consider raising these issues during your initial consultation with your attorney.

Legal Fees

A second factor to consider early in any legal consultation is the fee schedule. You should ascertain whether your attorney charges for the initial consultation, how your attorney will bill for his/her time and exactly what the agreed-upon fee covers. You should determine, for example, whether the fee quoted covers both the separation agreement and the final divorce decree and whether the fee will be increased if the divorce is contested.

Alimony and Child Support

Any separation or divorce proceeding will necessarily involve an adjudication of property rights by a court. In appropriate cases, this may include provision of alimony and child support. Ordinarily, these payments are made directly by the party obligated to pay the alimony and child support to the party entitled to receive such payments. If problems arise in obtaining such payments, a former spouse may obtain a court order (called a qualifying garnishment order) which will require the Government to pay directly to the former spouse the portion of the employee's salary to which the spouse is entitled. Where the spouse obligated to make support payments is a retiree from the Federal Government, the original court decree ordering such payments may provide for direct payment by the Government from the retiree's annuity even when there has been no default by the party obligated to pay. Such a court decree (called an apportionment order) only applies to retirement annuities, not salaries. Regulations concerning garnishment are attached at Appendix A; regulations concerning apportionment are attached at Appendices B and C.

Civil Service Retirement Law

Under the Civil Service Retirement System, when an employee retires, he/she has certain choices depending upon marital status. If the employee is married at the time of retirement, the employee may elect to receive a reduced annuity with a survivor benefit paid to the current spouse or may elect a full annuity for "self only" with no survivor benefit. If no survivor benefit or less than the maximum survivor benefit is chosen, the retiree and spouse must sign a form in which the current spouse acknowledges being informed that no survivor benefit or less than the maximum survivor benefit has been elected.

If the employee is unmarried at the time of retirement, he/she may elect a full annuity for "self only," or a reduced annuity with a survivor benefit paid to a person with an insurable interest. Generally a close relative or former

spouse who has a reasonable expectation of financial benefit from the continued life of the employee may be said to have an insurable interest. In order for an unmarried retiree to designate a person as having an insurable interest, the retiree must first pass a physical examination.

In summary, three key points must be kept in mind. Under current Civil Service law, a former spouse can only get a survivor annuity if the employee is unmarried at the time of retirement and expressly designates the former spouse to receive a survivor annuity as an insurable interest. Second, there is no way for a former spouse to be granted a survivor annuity if the employee is married to someone else at the time of retirement. Finally, even if the former spouse is designated to receive a survivor annuity as an insurable interest, the retiree upon remarriage can cancel the survivor annuity for the former spouse in favor of a survivor annuity for the new spouse.

In the event that an employee promises to elect a survivor benefit for a former spouse as part of a property settlement agreement and upon retirement elects instead a full annuity for self only or a reduced annuity with survivor benefit to a second spouse, the former spouse's only legal remedy is a suit against the retiree for failure to comply with the terms of the property settlement agreement. Under current law, the former spouse has no claim against the Government.

Other Federal Retirement Systems

Under certain other federal retirement systems (Foreign Service and Central Intelligence Agency) qualified former spouses of employees eligible to participate in these systems may be entitled to share the employee's retirement annuity and to receive a survivor benefit. To be qualified under either system, a former spouse must have been married to the employee for not less than 10 years during the employee's federal service. In addition, under the CIA retirement system, a former spouse must have resided overseas with the employee for five of those 10 years.

Such a former spouse may be entitled to the following: up to 50 percent of the employee's lump-sum refund of retirement contributions if the employee separates from the service without becoming eligible for an annuity; up to 50 percent of the employee's retirement annuity; and a survivor annuity equal to up to 55 percent of the full annuity. The precise amount is determined according to the years of marriage during periods of creditable service. However, all these entitlements are subject to modification by spousal agreement or court order. Also, the annuities may be forfeited if the former spouse remarries before reaching age sixty.

The maximum survivor annuity or combination of survivor annuities which may be provided is 55 percent of the full amount of the employee's annuity. Once a survivor benefit has been provided for the former spouse according to his/her pro rata share of 55 percent, an additional survivor benefit may be provided for another beneficiary (for example, a current or "second" spouse) for that portion, if any, which remains of the 55 percent ceiling on survivor annuities.

APPENDICES

- A. Processing Granishment Orders for Child Support and/or Alimony, 5 C.F.R. Part 581 (1982).
- B. Civil Service Retirement and Disability Fund, 5 C.F.R. Part 831 (1982)
- C. Foreign Service Retirement and Disability System, Section 801 et. seq. Foreign Service Act of 1980, 94 Stat. 2113 (1980).